BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 138 *of* 1904-05.

Appellants	*Versus*	Respondent
1. Nanjundaiya 2. N. Srikantaiya		Venkatappa, minor by guardian Gopamma.

Subject.

Claim to the shanbhogi office of Vederpura and other villages in the Tumkur Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

This is a shanbhogi case. One Ramaiya had four sons named Naranappa, Venkatappa, Krishnappa and Sivaramaiya. He was the hereditary shanbhog of certain villages, seventeen in number. On his death he was succeeded by one of his sons Venkatappa. Eight of the villages were held by Venkatappa and the other nine by one Lingannaiya apparently unconnected with the family. The latter is said to have obtained the nine villages last mentioned in consideration of certain services long rendered by his father to the hakdar's family and on the express understanding that he should not alienate the same. There is some dispute as to whether this is a fact or whether Lingannaiya's connection is traceable to some other origin than a transfer to him by Ramaiya's family. However that may be, it is clear that Lingannaiya, though like every other holder of a hereditary office, incompetent to alienate the shanbhogi of the nine villages in question, was the officially recognized occupant of the latter in his own right and not in a subordinate capacity. For the purpose of this case, it may therefore be taken as established beyond all doubt that of the seventeen villages in dispute, eight belonged to Venkatappa and nine to Lingannaiya. Each of these persons was in the enjoyment of his villages until the year 1862 when Lingannaiya was dismissed on a charge of misappropriation. His sons Nanjappaiya, Puttanna and Timmappa were expressly debarred from succeeding to the office on the ground that they had been privy to the offence aforesaid. In addition to the eight villages which he held in his own right, Venkatappa was appointed to act for the vacancy caused by the removal of Lingannaiya. Venkatappa held all the seventeen villages until his death which occurred in 1871. His minor son Venkatramaiya was next appointed to succeed to his own villages while his brother Naranappa's son Divakeraiya was appointed shanbhog of the remaining, or Lingannaiya's nine villages. Shortly afterwards, *i. e.*, in 1874 Lingannaiya's son Puttanna's son Kapanipataiya and one Krishnappa, a daughter's son of Lingannaiya, claimed the last mentioned nine villages on the ground that they were in no way affected by the order of exclusion passed in 1862. In reply the Deputy Commissioner and the Division Commissioner informed them that there was then no vacancy, that the one which had existed in 1871, had been filled up previous to their application, and that if they renewed their request on the occurrency of a vacancy their claim would be considered by the Deputy Commissioner. Divakeraiya held nine villages in his own account and eight on that of the minor Venkatramaiya for some time, and then died. A gumasta was subsequently put in charge of all the seventeen villages pending further arrangements. Kapanipataiya pressed his claim in 1880. The Deputy Commissioner gave him all the seventeen villages under the impression that his claim related to the entire firka. In so doing, he lost sight of the fact that eight of the villages belonged to Venkatramaiya who could not be prejudicially affected by the demise of his gumasta Divakeraiya. Venkatramaiya protested as soon as he heard of the Deputy Commissioner's order. He further contended that he had attained his majority and was entitled to be inducted into possession of his eight villages. But neither Kapanipataiya nor Venkatramaiya was given possession pending the Survey Settlement which was then near at hand. In the meantime, Divakeraiya's son Naranappa also preferred a claim. In the course of an enquiry held in 1882 Kapanipataiya and Venkatramaiya admitted that they were entitled to only nine and eight villages, respectively. In 1886, the Deputy Commissioner rightly rejected Divakeraiya's son Naranappa's claim. He gave all the seventeen villages to Venkatramaiya on the ground that at the Survey Settlement they had been formed into a single circle to the splitting up of which he (Venkatramaiya) was not agreeable. He had some doubt as to whether a vacancy had occurred of the kind contemplated by the order of 1874, but he held that in any event he could not afford any relief to Kapanipataiya in the face of Venkatramaiya's objection to the subdivision of the consolidated charge duly constituted by the Survey Department. Kapanipataiya died shortly after the rejection of his claim, *i. e.*, about twelve years ago. In 1898, his uncle Timmappa's son Srikantaiya, the 2nd appellant, reasserted the claim but was referred to the order already passed in 1886. In 1903-04, Venkatramaiya died and the question arose as to who should be appointed his successor. The claimants were Venkatramaiya's minor son, the respondent, and Kapanipataiya's brother and cousin, the 1st and 2nd appellants. The Deputy Commissioner in reliance upon the orders of 1886, preferred the former to the latter. Hence this appeal. It must be noted here that the charge being an unwieldy one, the Survey Department with the sanction of Government divided it in 1902 into three circles as particularized in the margin. The appellant contend that the difficulty which confronted the Deputy Commissioner in 1886 has thus since disappeared and that in fairness to them they should be given the share to which they are legitimately entitled.

(a)	(b)	(c)
1. Honnenhalli	1. Vadirpura	Seenappanahalli
2. Bidankere	2. Karna Kuppe	
3. Tondigere	3. Narnakere	
4. Nidavalalu	4. Doddaguni	
5. Tandigere Kaval	5. Sangalapura	
6. Timmanapalya	6. Narsapura	

NOTE.—The other vi lages in the above were absorbed in the above, the total number being reduced to 13.

2. From the above statement of facts, it is abundantly clear that the appellants possess a hereditable right, that that right was not forfeited by the order of 1862, and that there is nothing to prevent the present claim being allowed. Howsoever acquired, Lingannaiya's family had an indefeasible *hak* subject only to the superfluous condition that the office was unalienable. This hak finds mention in several old accounts the genuineness of which is unquestionable. The order of 1862 limited the disqualification to the sons of Lingannaiya who had actively assisted him in the discharge of the duties of shanbhog and in the perpetration of the fraud brought home to him. There is in it no indication that a permanent and perpetual bar was intended. This derives support both from the arrangement under which Venkatappa was only appointed to act and from the order of 1874 which reserved Lingannaiya's grandson's claim for consideration on a vacancy occurring. That claim was not only considered but also admitted by the subsequent order of 1880; in giving immediate effect to which no difficulty should have arisen but for the Deputy Commissioner's misapprehension that the claim involved all the seventeen villages instead of only nine. Another circumstance in favor of the appellants is the admission made by Venkatramaiya in 1882. If the villages had not all been clubbed together and constituted a single circle to the division of which into two charges, Venkatramaiya unreasonably objected in 1886, each of the contending parties, namely, Kapanipataiya and Venkatramaiya would have been given the villages to which he was entitled by right of hereditary succession. It is evident from the order of 1874 that the next vacancy at which Kapanipataiya's claim was promised to be considered was similar to the one which had existed in 1871 but which had been filled up, that is, a vacancy occasioned by the death or removal of the holder and not by the extinction of his family. So long as there was a single circle, Kapanipataiya could not again urge his claim; and he died before the charge was, as observed above, divided into three circles under authority. This division took place in 1900 and the then holder Venkatramaiya died in 1903-04. The appellants thereupon lost no time in again coming forward with their claim. They could not do so earlier as in that case they would have been met by the objection either that there was no vacancy or that the charge was indivisable. The present application is quite in time and is justly deserving of favorable treatment. As between the appellants themselves the first as the brother of Kapanipataiya who had long urged his claim and even secured a recognition of it in 1880, is entitled to priority over the 2nd whose father died some thirty years ago and who never before 1898 made any endeavour to assert and substantiate his title.

3. The ancestors of the parties had, roughly speaking, an equal share in the villages forming the subject of the controversy. The net pctgi attached to circle (a) is Rs. 63-2-0, to (b) Rs. 73-8-0 and to (c) Rs. 17-10-0. Circle (b) is thus about equal to circles (a) and (c) together, and must be adjudged to the first appellant unless the respondent prefers to keep it for himself and surrender (a) and (c) to the 1st appellant.

The Deputy Commissioner's order will be modified accordingly.

No. R. 10382—*R. M.* 553-04-9, *dated Bangalore, 3rd February* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his docket No. 442, dated the 7th November 1905.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.